

Respectfully submitted,

**GLENDALE BROADCASTING COMPANY**

By John J. Schauble  
Lewis I. Cohen  
John J. Schauble

Cohen and Berfield, P.C.  
1129 20th Street, N.W., # 507  
Washington, D.C. 20036  
(202) 466-8565

Its Attorneys

Date: October 7, 1994

**MULLANEY ENGINEERING, INC.**

9049 SHADY GROVE COURT  
GAITHERSBURG, MD 20877

301 921-0115

**STAMP & RETURN**

September 21, 1993

Victoria McCauley  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2525 M Street, N.W., Room 8316  
Washington, DC 20554

RECEIVED  
SEP 22 '93  
FEDERAL COMMUNICATIONS  
COMMISSION  
OFFICE OF THE  
SECRETARY

**RE: Vacant Allotment Ch. 63 Montgomery, AL**

Dear Ms. McCauley:

I am writing you to call to your attention to a set of circumstances that has created a short-spacing to the "official" FCC reference point for the Vacant Allotment on Ch. 63\* at Montgomery, AL. The short-spacing came about in a de facto manner in that it did not exist until the FCC cancelled an unbuilt C.P. (initially granted November 15, 1989) held by Troy State University for that allotment (C.P. cancelled by letter from TV Branch Chief, Clay Pendarvis, June 20, 1990). Upon cancellation the FCC once again started to use the city reference coordinates (32-22-54 / 86-18-30) and thus unknowingly created a 18.14 kilometer short-spacing to the licensed site of WHSG on Ch. 63 at Monroe, GA (WHSG was granted a C.P. on November 29, 1989). The rules require a co-channel UHF separation of 280.8 kilometers when both stations are located in Zone II and the licensed site of WHSG is only 262.66 km away from the Montgomery reference point.

I feel obligated to point out to you that I currently am the engineer of record for Glendale Broadcasting Company which has filed a competing application (BPCT-920228KC) against the renewal of WHSG in Monroe, GA. In so doing the FAA site limitations forced Glendale into proposing a site that was 0.26 kilometers closer to Montgomery and

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Vacant Allotment Ch. 63 Montgomery, AL  
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thus Glendale has been saddled with a short-spacing issue. However, notwithstanding the issue facing Glendale, there is still a very valid need to correct the FCC reference coordinates in order to properly protect the allotment at Montgomery from future changes which might totally eliminate its allowable site area.

I would request that you modify the TV Table of Allotments to reflect the fact that the Vacant Allotment for Ch. 63 at Montgomery has a site restriction of at least 19 kilometers to the southwest (82-17-00 / 86-28-30) in order to avoid a short-spacing with the licensed site of WHSG and with the site proposed by Glendale. Since the Montgomery allotment is vacant one might say that such a correction is unnecessary at this time. I don't agree.

If the present allotment coordinates remain unchanged it is possible for an existing or a new station located to the west southwest of Montgomery to propose a site that will just barely protect the existing allotment reference point in downtown Montgomery. Such a new proposal would prevent a future applicant for the Montgomery allotment from providing the required separation to the Monroe facility since any site properly spaced to Monroe would now be short-spaced to the proposed facility to the southwest. This in effect would force the FCC (1) into granting a future Montgomery applicant a short-spacing waiver to at least one if not both locations or (2) into deleting the Montgomery allotment as unuseable since no properly spaced site is possible. Since the original and still current purpose of reference coordinates is to protect an allotment's allowable site area until it is built it would appear that common sense would

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Vacant Allotment Ch. 63 Montgomery, AL  
September 21, 1993

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demand that the Montgomery coordinates be modified to eliminate this de facto short-spacing. Such a change would eliminate the short-spacing problem with WHSG, Glendale, and future applicants for the Montgomery allotment.

Assuming that you agree that a change in the coordinates is warranted I have enclosed a map which depicts the area in which a new non-short-spaced reference point can be established. The map includes the impact on the Montgomery allotment from (1) the WHSG licensed site and (2) the pending site proposed by Glendale. As you can see, both sites have an essentially identical impact. While it would be theoretically possible to propose a set of coordinates that protects WHSG and not Glendale I do not believe that such a modification is in the best interest of the Montgomery allotment. Such a modification while protecting the allotment from being totally wiped out would potentially leave (under the above scenario) only a small sliver of land which would comply with the FCC spacing rules. Having represented, over the years, many applicants looking for TV & FM tower sites I personally know how difficult it is to find a site that not only meets the FCC requirements but also those of the FAA, local zoning and environmentalists. With these real world limitations in mind each allotment should seek the largest permissible area.

Troy State University, former permittee of the Montgomery allotment proposed a site that was 11 kilometers beyond the minimum separation to the site ultimately built by WHSG. Consequently, I request that you adopt as the reference coordinates for the Montgomery allotment the coordinates specified by Troy State in BMPET-890901KE (32-17-24 / 86-36-40). This site is well within the city grade radius of a facility operating with 3000 kW


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Vacant Allotment Ch. 63 Montgomery, AL  
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at an HAAT of 300 meters (see map). If another set of coordinates is preferred, those coordinates should offer more than the minimum separation from WHSG and Glendale's application.

Thank you for your consideration of this matter.

Sincerely,



John J. Mullaney

encl - Montgomery Ch. 63 Allowable Area Map

cc: Lewis I. Cohen, Esquire (Counsel for Glendale)  
Nathaniel F. Emmons, Esquire (Counsel for Trinity)

280.8 KM FROM  
GLENDALE  
AMEND. SITE

FORMER CP SITE N. LAT.: 32° 17' 24"  
W. LON.: 86° 36' 40"  
FCC REFERENCE N. LAT.: 32° 22' 54"  
W. LON.: 86° 18' 30"

FORMER  
CP SITE

ALLOWABLE SITE AREA

80 dBu  
3000 kW  
300 m HAAT  
52 KM

ALLOWABLE SITE AREA  
TELEVISION CHANNEL 63  
MONTGOMERY, ALABAMA

MULLANEY ENGINEERING, INC.  
GAITHERSBURG, MARYLAND

FIGURE 1  
SEPTEMBER 1993

F.C.C. REFERENCE  
CHANNEL 63  
MONTGOMERY, AL

MONTGOMERY

31.4 KM FROM  
WRJM-TV CH. 67-  
TROY, AL

280.8 KM FROM  
WHSG LICENSE  
CHANNEL 63z  
MONROE, GA

Scale 1:250,000  
0 5 10 15 20 Statute Miles  
0 5 10 15 20 25 30 Kilometers

87°00'

51

52

45'

53

54

30'

55

56

15'

00 000 FEET (ALA. EAST) 58

59

86°00'

600 000 FEET (ALA. EAST)

360

30'

359

358

357

15'

356

355

354

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352

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350

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ATTACHMENT TWO

JOSEPH E. DUNNE  
COLBY M. MAY

ALSO ADMITTED IN VIRGINIA

**RECEIVED**  
OCT 14 1993

COHEN & BERFIELD

MAY & DUNNE

CHARTERED

ATTORNEYS AT LAW

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SUITE 520

WASHINGTON, D.C. 20007

(202) 298-6345

RICHARD G. GAY  
OF COUNSEL

TELECOPIER NO.

(202) 298-6375

October 13, 1993

HAND DELIVER

Victoria McCauley, Esq.  
Allocations Branch, Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8316  
Washington, D.C. 20554

RE: Channel \*63, Montgomery, Alabama

Dear Ms. McCauley:

This responds to the letter of September 21, 1993, sent to you by John J. Mullaney requesting modifications of the reference coordinates for channel \*63, Montgomery, Alabama.

This firm represents the licensee of WHSB-TV, Channel 63, Monroe, Georgia, in the license renewal litigation in which Mr. Mullaney's client, Glendale Broadcasting Company ("Glendale"), is the competing applicant (MM Docket No. 93-156).

Mr. Mullaney's request cannot be granted, because Commission policy does not permit a change in reference coordinates outside of a rule-making proceeding. Moreover, the Commission will not initiate a rule making proceeding solely to change reference coordinates. In the Matter of Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Lima, Ohio, Muncie, Indiana, Rockford, Illinois, and Grand Rapids, Michigan), 7 FCC Rcd. 5933, n. 2 (MMB 1992). If, in spite of this policy, a process is initiated to consider Mr. Mullaney's request, we would want the opportunity to comment on the public interest considerations bearing on the proposed change of reference coordinates.

We note, however, that Glendale would not benefit from Mr. Mullaney's suggestion in any event. Glendale's application is not acceptable under the Rules if grant of the application depends upon the Commission's now changing the Montgomery Channel \*63 reference point. If the reference coordinates must be changed in order for Glendale's application to be granted, the application is a contingent application (since grant is contingent on an action not yet taken by the Commission). Under Section 73.3517 of the Rules, contingent applications are not acceptable for filing.

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Page 2

Glendale's application would have been returned when it was filed in March 1992 if the sole basis for grant had been a prospective change of the Montgomery reference coordinates. The only way Glendale could avoid return of its application was to seek a waiver of the short-spacing to the current Montgomery reference point (which is what Glendale did). The application is viable only because of the waiver request. Hence, the application must stand or fall on the merits of that request (which is currently the subject of a designated issue in MM Docket No. 93-156).

A change of the Montgomery reference point cannot make Glendale's application ipso facto grantable without also confirming that grant was always contingent on such action and that the application was thus unacceptable from the outset. An unacceptable application is by definition ungrantable. Again, therefore, Glendale's application can be granted only if Glendale can show in MM Docket No. 93-156 that a waiver of the current short-spacing is warranted.

For all of these reasons, Mr. Mullaney's request for an ad hoc modification of the Montgomery Channel \*63 reference point should be dismissed.

Respectfully submitted,

Trinity Christian Center of Santa  
Ana, Inc., d/b/a Trinity Broad-  
casting Network

By: 

Colby M. May  
Its Attorney

CMM:gmcB78  
xc: John J. Mullaney  
Lewis I. Cohen, Esq.



**STAMP & RETURN**

LAW OFFICES

**COHEN AND BERFIELD, P.C.**

BOARD OF TRADE BUILDING

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October 21, 1993

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**OCT 21 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Victoria McCauley, Esq.  
Allocations Branch, Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8316  
Washington, D.C. 20554

Dear Ms. McCauley:

This firm represents Glendale Broadcasting Company, on whose behalf John J. Mullaney wrote a letter dated September 22, 1993 requesting a change in the reference coordinates for the vacant allotment on Channel 63\* at Montgomery, Alabama. This letter is a response to the letter from Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (Trinity) dated October 13, 1993.

Although Trinity had every opportunity to state why a change of the reference coordinates would not be in the public interest, it did not do so. The issue to be resolved is whether a change in the reference coordinates is in the public interest, not the acceptability of Glendale's application. Action on Glendale's request should not be deferred merely to give Trinity a second opportunity to make arguments it could have made earlier.

Trinity cites Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations, (Lima, Ohio, Muncie, Indiana, Rockford, Illinois, and Grand Rapids, Michigan), 7 FCC Rcd 5933 n.2 (1992) for the proposition that "Commission policy does not permit a change in reference coordinates outside of a rule making proceeding"

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Victoria McCauley, Esq.  
Page Two

and "the Commission will not initiate a rule making proceeding solely to change reference coordinates." Mr. Mullaney filed his letter pursuant to a suggestion from the staff." In fact, the cited case demonstrates that the staff would be fully authorized to grant Glendale's request. In the cited order, Trinity was able to obtain a change in reference coordinates, although its request was not filed as timely comments in the rulemaking proceeding. The request was filed after a petition for reconsideration of the staff's report and order. Trinity's request was accepted and granted without subjecting it to the comment and reply comment procedure of the rulemaking process. Here, Trinity has already had a full opportunity to comment on Glendale's proposal, and there is no licensee, permittee or applicant for the Montgomery channel to be affected by this action. If Trinity's request could be granted without being subject to all the procedures of a rulemaking proceeding, so can Glendale's.

Furthermore, the cited order states that the purpose of the policies is to "protect[] the integrity of the Television Table of Allotments." Here, the integrity of the Table of Allotments is threatened by inaction. As Mr. Mullaney has explained, an application for the Montgomery channel could not be filed at the reference coordinates because the reference site is short-spaced to WHSG(TV). If the current reference coordinates are maintained, the allowable site area for the Montgomery channel could be inadvertently eliminated by future applications or allocations. A prompt change of the reference coordinates is necessary to eliminate that possibility.

Trinity devotes the majority of its letter to arguing the acceptability of Glendale's application. The Administrative Law Judge presiding in the Monroe, Georgia comparative renewal proceeding, not your office, has jurisdiction over Glendale's application. The decision to change the reference coordinates must be based upon the public interest factors stated in Mr. Mullaney's letter, which Trinity has declined to discuss.

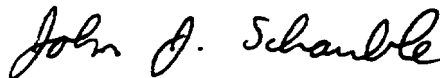
Nonetheless, Glendale must point out that its application does not violate Section 73.3517 of the Commission's rules, the "contingent application" rule. That rule only "prohibits the filing of one application contingent on the outcome of another in another proceeding." Valley Broadcasting Co., 58 RR 2d 945, 948 (1985). Glendale's application is

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Page Three

not contingent upon the grant of any other application. If the reference coordinates are not changed, Glendale will proceed to show that a waiver of the short-spacing rule is justified. An appropriate change in reference coordinates would clearly moot the short-spacing issue, since any short-spacing to either WHSG(TV) or Glendale's application would be eliminated.

Accordingly, Glendale asks that the reference coordinates for the Montgomery Channel 63 allocation be promptly changed as suggested in Mr. Mullaney's letter.

Respectfully submitted,



John J. Schauble  
Counsel for Glendale Broadcasting  
Company

cc: John J. Mullaney  
Colby M. May, Esq.

ATTACHMENT FOUR

United States of America



**FEDERAL COMMUNICATIONS COMMISSION**  
**FM BROADCAST STATION CONSTRUCTION PERMIT**

Official Mailing Address:

-----  
CRISTA MINISTRIES, INC.  
19303 FREMONT AVE N  
SEATTLE, WA 98133  
-----

Authorizing Official:

*Michael F. Wagner*  
-----  
Michael F. Wagner  
Supervisory Attorney, FM Branch  
Audio Services Division  
Mass Media Bureau

Grant Date: **AUG 12 1993**

Call sign: KLYN

This permit expires 3:00 am.  
local time 18 months after  
grant date specified above

Permit File No.: BPH-870227IZ

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

This permit shall be automatically forfeited if the station is not ready for operation within the time specified (date of expiration) or within such further time as the Commission may allow, unless completion of the station is prevented by causes not under the control of the permittee. See Sections 73.3598, 73.3599 and 73.3534 of the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of permittee:

CRISTA MINISTRIES, INC.

Station Location:

WA-LYNDEN

Frequency (MHz): 106.5

Channel: 293

Class: C

Call sign: KLYN

Permit No.: BPH-870227IZ

Hours of Operation: Unlimited

Transmitter location (address or description):

WA-Atop Mount Constitution, 5.0 km Southeast of Central  
Eastsound at 113.5 Degrees True

Transmitter: Type accepted. See Sections 73.1660, 73.1665 and 73.1670  
of the Commission's Rules.

Transmitter output power: As required to achieve authorized ERP.

Antenna type: (directional or non-directional): Non-directional

Antenna coordinates: North Latitude: 48 40 45.0  
West Longitude: 122 50 31.0

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the horizontal plane (kW) . . . . . :	68.0	68.0
Height of radiation center above ground (meters) . . . . . :	114.0	114.0
Height of radiation center above mean sea level (meters) . . . . . :	756.0	756.0
Height of radiation center above average terrain (meters) . . . . . :	711.0	711.0
Overall height of antenna structure above ground (including obstruction lighting, if any) . . . . . :	154.0 meters	

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

Paragraph 1.0, FCC Form 715 (March 1978):

Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be equal and approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 100 feet nor less than 1 and 1/2 feet in width. All towers shall be cleaned and repainted as often as necessary to maintain good visibility.

Paragraph 3.0, FCC Form 715 (March 1978):

There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 620- or 700-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any normal angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any normal angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to approximately one-half of the luminous period.

Paragraph 4.0, FCC Form 715 (March 1978):

At approximately one-half of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any normal angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any normal angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of the tower at the prescribed height.

## Paragraph 13.0, FCC Form 715 (March 1978):

On levels at approximately three-fourths and one-fourth of the over-all height of the tower, at least one 116- or 125-watt lamp (A21/TS) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

## Paragraph 21.0, FCC Form 715 (March 1978):

All lighting shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

## Paragraph 22.0, FCC Form 715 (March 1978):

During construction of an antenna structure, for which obstruction lighting is required, at least two 116- or 125-watt lamps (A21/TS) enclosed in aviation red obstruction light globes, shall be installed at the uppermost point of the structure. In addition, as the height of the structure exceeds each level at which permanent obstruction lights will be required, two similar lights shall be displayed nightly from sunset to sunrise until the permanent obstruction lights have been installed and placed in operation, and shall be positioned so as to insure unobstructed visibility of at least one of the lights at any normal angle of approach. In lieu of the above temporary warning lights, the permanent obstruction lighting fixtures may be installed and operated at each required level as each such level is exceeded in height during construction.

## Special operating conditions or restrictions:

The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower, or antenna from radiofrequency radiation in excess of FCC guidelines.

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The authority granted herein is subject to the condition that the field intensity from the licensee's transmitter shall not exceed 27 mV/m as measured at the Federal Communications Commission's Ferndale, Washington office. In the event of interference to monitoring, direction finding, or related operations at the Federal Communications Commission's Ferndale, Washington office caused by either harmonic or spurious radiation, the licensee shall take such immediate corrective action as is necessary to eliminate the interference. This shall include responsibility for

furnishing, installing, and adjusting transmitter filter circuits, shielding, or other corrective devices which may be necessary to minimize harmonic or spurious radiation. If these measures fail to eliminate interference to FCC operations caused by the presence of the licensee's signal, or if the field intensity exceeds 27 mV/m, the licensee shall immediately reduce power to the extent necessary to eliminate the interference and to comply with the field limit. After determining this lower power level, the licensee shall immediately apply for a Special Temporary Authority (STA) and shall file an application for construction permit to the Commission for the altered parameters.



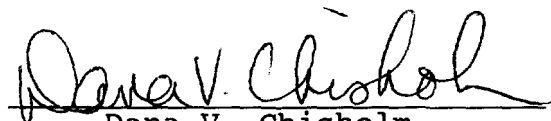
**CERTIFICATE OF SERVICE**

I, Dana V. Chisholm, do hereby certify that on the 7th day of October 1994, a copy of the foregoing "Proposed Findings of Fact and Conclusions of Law" was sent first-class mail, postage prepaid to the following:

Robert A. Zauner, Esq.\*  
Gary Schonman, Esq.  
Hearing Branch  
Federal Communications Commission  
2025 M Street, NW, Room 7212  
Washington, DC 20554

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May & Dunne, Chartered  
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Dana V. Chisholm

\*Hand Delivered